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March 6, 2014

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To: Supervisor Don Knabe, Chairman
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From: William T Fujioka
Chief Executive Officer

A handwritten signature in dark ink, appearing to read "W. Fujioka", is written over the printed name and title.

SACRAMENTO UPDATE - REPORT ON A PROPOSED INITIATIVE TO REVISE THE MEDICAL INJURY COMPENSATION REFORM ACT OF 1975

Executive Summary

This memorandum provides an update on efforts to revise the Medical Injury Compensation Act of 1975.

As reported on September 18, 2013, the Secretary of State released a proposed initiative for signature gathering titled: *Drug and Alcohol Testing of Doctors. Medical Negligence Lawsuits. Initiative Statute*. Proponents of the measure must gather 504,760 signatures from registered voters by March 24, 2014 in order to qualify the initiative for placement on the November 2014 State General Election ballot. Early indications are that proponents will gather enough signatures to place this measure on the ballot.

Background

The proposed measure would increase the current \$250,000 cap on non-economic damages due to medical malpractice established in the Medical Injury Compensation Reform Act (MICRA) of 1975. The cap would increase to \$1.1 million effective January 1, 2015 based on the rate of inflation since 1975 and would be adjusted annually thereafter to reflect any increase in inflation as measured by the Consumer Price Index.

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The proposed measure also would establish requirements for drug and alcohol testing of physicians. It would require every health care practitioner to report to the State Medical Board information regarding a physician who is impaired by drugs or alcohol while on duty, or who was responsible for the treatment of a patient during an adverse event and failed to follow the appropriate level of care. Hospitals would be required to conduct drug and alcohol tests of physicians as follows: 1) on a random basis; 2) immediately upon the occurrence of an adverse event on physicians responsible for the care and treatment of the patient during or 24 hours prior to the event; and 3) at the direction of the State Medical Board upon receipt of a referral from a third party indicating that a physician may have been impaired by alcohol or drugs while on duty. Physicians found to be drug or alcohol impaired while on duty or who refuse or fail to comply with testing provisions would be subject to disciplinary action.

In addition, health care practitioners and pharmacists would be required to consult the Controlled Substance Utilization Review and Evaluation System prior to prescribing or dispensing controlled drugs, such as Oxycontin or Vicodin, to a patient for the first time. Failure to do so would be cause for disciplinary action by the practitioner's licensing board.

According to the Legislative Analyst's Office (LAO), this measure would have a wide variety of fiscal effects on State and local governments. The LAO notes that raising the MICRA cap on non-economic damages would result in higher costs due to an increase in the amount of awards and settlements in medical malpractice cases, and higher costs due to an expected increase in the number of injury claims filed. The LAO indicates that higher malpractice costs would, in turn, increase costs for health care providers that self-insure and increase premiums for providers that purchase malpractice insurance. The LAO estimates that raising the cap on non-economic damages would increase medical malpractice costs for State and local government health care purchasers and providers by an average of 10 percent resulting in increased costs for health care at least in the low millions of dollars annually, potentially ranging to over \$100.0 million.

Potential County Impact

The Department of Health Services (DHS) reports that judgments and settlements arising from medical malpractice claims are generally incurred as net County costs. DHS indicates that any increase in the current MICRA cap would increase County costs and would inevitably result in reduced resources available for every facet of patient care. DHS is committed to providing vital, high-quality health services to vulnerable populations, and diverting funds to pay for increased litigation expenses would not necessarily improve patient outcomes or produce higher quality medical care.

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County Counsel reports County costs of approximately \$36.5 million in MICRA claims and settlements from September 2008 through March 2013, and concurs that an increase in the MICRA cap would result in significant increased County costs and exposure to additional claims for medical malpractice.

Compromise Legislative Proposal

On February 21, 2014, Senate President pro Tempore Darrell Steinberg introduced SB 1429, which cites the intent of the Legislature to bring interested parties together to develop a legislative solution to issues surrounding medical malpractice injury compensation. This measure is currently in the Senate Rules Committee and has not been scheduled for a hearing.

Conclusion

Should the MICRA initiative qualify for the November 2014 General Election, there is existing Board-approved policy to oppose legislation that would revise MICRA to impede access, increase health care costs, and/or divert health care dollars from patients. However, positions on ballot measures are matters for Board policy determination.

This office will continue to closely monitor the status of the proposed MICRA ballot initiative and SB 1429 and will work with County Counsel and the Department of Health Services to further analyze potential County impact.

We will continue to keep you apprised.

WTF:RA
MR:VE:ma

c: All Department Heads
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